IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 128 of 1999

with

CRIMINAL REVISION APPLICATIONS 262 TO 266 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BIJAL REVASHANKER JOSHI

Versus

G M KRISHKAR

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Appearance:

1. Criminal Revision Application No. 128 of 1999

MR R K Shah and Mr JAL SOLI UNWALA for Petitioner

Mr P G Desai for Respondent No. 1

RULE SERVED for Respondent No. 2

MR HN JHALA for Respondent No. 5

M/S THAKKAR ASSOC. for Respondent No. 9

MR HARIN P RAVAL for Respondent No. 11

MR YF MEHTA for Respondent No. 12

Mr S P Dave, APP for Respondent No. 14

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 22/06/2001

COMMON (C A V) JUDGMENT

All these Criminal Revision Applications have been argued by the learned Advocates for the respective parties together. Since the arguments were common in all the matters referred to above, it is found proper to dispose of all these revision applications by this common judgment.

2. It would be relevant to consider here that the revision petitioner in all these revision petitions is the original informant and complainant-Ms. Bijal Revashankar Joshi. At her instance, a FIR was lodged before the Anti-Corruption Bureau against certain accused persons for offence punishable under Section 120-B,, 366, 376, 342, 354, 323, 384, 511, 170, 223, 468, 419 and 506 of IPC as well as under sections 7, 12 and 13(2) of the Prevention of Corruption Act, 1988. On receiving the said First Information Report filed by the revision petitioner on 3.8.1995, the Anti-Corruption Bureau (for short, 'the ACB'), undertook investigation and charge-sheet was filed against the respective respondents. It has been mainly contended in the FIR filed by the revision petitioner that with a view to facilitating the escape of accused Javed khan, an accused under the TADA, some of the respondents molested the informant and under the threats of blackmailing, forced and compelled her to obtain permission of jail visit to Central jail, Sabarmati, Ahmedabad under false pretext from one of the respondents - V Kannu Pillai, who was then serving as Inspector General of Prisons, Gujarat State, Ahmedabad, who happens to be an IPS Officer. It was alleged that with the aid and abetment of other respondent one Jethabhai Bharvad, Constable in Ahmedabad City, had committed rape on the revision petitioner on two occasions and other respondents were also the part of the said conspiracy. As said above, after concluding the investigation, charge-sheet was filed by the ACB in November, 1995 against some of the respondents. After the charge-sheet was filed, charge was framed on 2.1.1997.

3. Feeling aggrieved by the aforesaid charges framed against the respective respondents, some criminal revision applications were filed in this court being Criminal Revision Applications No.12 and 17 of 1997 and ultimately it has come out from the record that after

hearing the parties, this Court directed for further investigation into the said C.R. No.20/95 and it was directed that further investigation shall be undertaken by the CBI and not by the ACB. The charge framed as above was also quashed and set aside by this court. Thereafter, investigation was undertaken by the CBI which has submitted its report before the learned Special Judge. On receiving the said report from the CBI, the learned Special Judge heard the parties and passed orders dated 5.11.1998 under which the learned Judge directed that the report of the investigation of CBI produced at exh.159 and applications of some of the respondents be accepted. The learned Judge found that there was no prima facie case to proceed against the respective respondents for framing charge against them and, therefore, all the respective respondents were discharged under Section 227 of the Criminal Procedure Code,1973 (for short, 'the Code'). The aforesaid cases were disposed of accordingly. This was a judgment and order recorded by the Special Judge as a common judgment and order in Special Case No.5/96, 20/96, 50/96, 53/96 and 56/96.

4. Feeling aggrieved by the said judgment and order of the learned Special Judge, the petitioner above named has preferred these Revision Application before this Court. It has been mainly contended here that the learned trial Judge has not considered the pros and cons of the material placed before him. That the learned Judge has totally omitted to consider the report submitted by the ACB on the basis of which charge-sheet was filed and charge was framed. That in that view of the matter, the judgment and order of the trial court are illegal, perverse and deserve to be set aside. The petitioner has, therefore, prayed that the present revision be allowed and the judgments and orders in each matter be quashed and set aside and the Special Judge may be directed to frame charge against respondents No.2 to 13 and to proceed against them according to law.

5. Notices were issued and even rule was issued. All of them were duly served. I have heard the learned Advocates for the parties and have perused the papers. The matter was argued on behalf of the petitioner by learned Sr.Advocate Mr R K Shah, whose main grievance before this court was that though charge-sheet was filed by the ACB on investigation made by it, the learned trial Judge has totally omitted to consider the pros and cons of the papers made available to the court with the charge-sheet filed by the ACB. That therefore, the learned trial Judge has committed serious illegality in

overlooking the said papers of the investigation made by the ACB. That therefore, this is a fit case wherein the judgment and order of the trial court are quashed and set aside as they are illegal and perverse and, therefore, the matter may be remanded to the trial court for further consideration on all the materials including ACB papers.

6. On the other hand, it has been strongly contended on behalf of the CBI that the learned Judge was aware about the ACB papers and that there was some reference to the same during the course of the judgment of the trial court. That therefore, there is no question of remanding the matter back to the trial court. On the other hand, learned Sr. Advocate for the contesting respondent Kannu Pillai, has submitted that this court had indirectly quashed and set aside the earlier investigation of the ACB and, therefore, the report of the ACB was not required to be considered at all. Therefore, it has been prayed that in view of the report submitted by the CBI, there is no question of remanding the matter to the trial court. Learned Advocates for the respondents have strongly objected to the prayer of the petitioner for remanding the matter. They all unanimously prayed that the present revision petitions are not maintainable and the trial Judge has considered all pros and cons and therefore, there is no merit in the present revisions and consequently, the same may be dismissed. Mr S P Dave, learned APP appears for the State of Gujarat and he states that he endorses the arguments advanced by Mr P G Desai, learned Counsel for the CBI and Mr P M Thakkar, learned Sr.Advocate for the aforesaid respondent. He also submits that these revision applications are without any merit and deserve to be dismissed. It is required to be considered here that Mr S P Dave, learned APP for the State of Gujarat also states that he represents even the ACB, which is a part and parcel of the State of Gujarat. Therefore, on behalf of the ACB, the contention is that the revisions are meritless and they deserve dismissal.

7. Mr R K Shah, learned Sr.Advocate appearing for the petitioner has taken me through the judgment and order of learned Special Judge dated 5.11.1998. Now it would be relevant to consider that the learned Judge has not taken into account the papers of investigation made by the ACB. The only reference made to the said papers in the judgment by the learned Special Judge is that the statement recorded by the ACB would be relevant for the purpose of contradiction and for no other purpose. This clearly means that the learned Judge was clearly aware about the existence of the investigation papers in respect of the investigation made by the ACB. At the

same time, it is very clear that whatever is found from that material has not been taken into consideration for the purpose of deciding as to whether or not there are grounds for proceeding against the respective respondents or whether there is prima facie case for framing charge against the respondents concerned. Even the learned Advocates for the respective respondents have also not been able to show me from the said judgment and orders of the learned trial Judge that the materials placed before him by the ACB has been considered by the learned Special Judge. I am of the opinion that on going through the judgment and order the learned Special Judge, it does transpire that the learned Judge was of the view that the statements recorded by the ACB were relevant only for the purpose of contradiction under section 162 of the Code and for no other purpose. According to the decision of the learned Judge, this material was not useful for deciding as to whether or not there are grounds for proceeding against the respective respondents and whether there is prima facie case for framing charge against the respondents.

8. Mr R K Shah, learned Sr.Advocate for the petitioner has strongly contended that it was not open to the learned trial Judge to overlook the papers of investigation made by the ACB, since the investigation undertaken by the ACB has not been quashed and set aside by this court or by any other court and, therefore, it cannot be said, according to the argument of Mr Shah, that the investigation undertaken by the ACB was non-est or was non-existent at all. For this purpose, it would be relevant to consider the judgments of this court. On going through those judgments, it is very clear that this court has never quashed and set aside the investigation undertaken by the ACB in any proceeding which were required to be dealt with by this court. Learned advocates for the respondents have not shown me any judgment of this court quashing and setting aside the investigation undertaken by the ACB.

9. Another aspect of the case is that what has been set aside by this court in the earlier proceedings is the charge framed against the respondent by the trial court at the relevant point of time. In no judicial proceedings, the charge-sheet filed by the ACB has been quashed and set aside by this court. In other words, what has been quashed and set aside is the charge and not the charge-sheet. One has to find the difference in the two different subjects. Charge is one thing and charge-sheet is another thing. A charge-sheet is being submitted at the conclusion of the investigation under

173 of the Code. Section 173 of the Code makes it clear that every investigation under this Chapter shall be completed without unnecessary delay. It further shows that as soon as it is completed, the officer-in-charge of the police station shall forward to the Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating details shown in sub-section (2) of Section 173 of the Code. Now it is an admitted position that the ACB has already filed charge-sheet under section 173 of the Code. Now it is nowhere shown that this court or any other court has quashed and set aside the said charge-sheet filed by the ACB before the said court. Learned Advocates for the respondents have not been able to show me any order of this court setting aside the report filed under section 173 of the Code by the ACB. It is clear that the charge-sheet filed by the ACB has never been quashed and set aside by this Court. So far as the charge is concerned, it is required to be framed on the basis of the materials made available to the court concerned. These materials include the charge-sheet, the FIR or the complaint as the case may be, the statements of witnesses, the panchnama, the medical certificates and so on.

10. Some orders of this court passed earlier in earlier petitions have also been shown to me. One such order is dated 29.4.1997 passed in Special Criminal Application no.204/97 with Criminal Revision Applications no.12 and 17 of 1997 which appears to have been filed by the present petitioner in the past. There the time was extended for submitting final report to the CBI. It seems that the State Government had passed some orders issuing direction for investigation in the matter. This court has clarified in the aforesaid order that the investigation shall not be only confined to the points on which the Government has directed, which has been reproduced in para 8 of the order dated 28.2.1997, but the direction is for complete reinvestigation. On the basis of this order, an attempt was made to show that the court has passed an order for reinvestigation into the matter and it is not for further investigation. Now, as said above, there is no dispute that the word 'reinvestigation' has been used in the aforesaid order, but at the same time, it is required to be considered that this court has never quashed and set aside the earlier investigation or the charge-sheet which was filed at the conclusion of the aforesaid investigation made by the ACB. In other words, neither the earlier investigation of ACB nor the charge-sheet filed by the ACB on conclusion of the said investigation has been

quashed and set aside by this court. The order dated 29.4.1997 does not speak about quashing and setting aside of the said investigation and the charge-sheet. In that view of the matter, I am of the opinion that it cannot be said that this court had earlier directed for reinvestigation by by-passing the earlier investigation. I am of the opinion that the order dated 29.4.1997 cannot be read in the manner in which it was sought to be read as contended by Mr P G Desai, learned Advocate for the CBI.

11. It is to be seen that thais was not a revision for challenging the earlier investigation made by the ACB. Any way, on a careful perusal of this order dated 29.4.1997, I am of the opinion that by and large, the order relates to the extension of time for submission of final report and not for quashing earlier investigation and for starting de-novo investigation. It would be relevant to consider the observations made in para 3 of this courts' order dated 29.4.1997, which says that the learned Judge while pronouncement of the said judgment, had gone through the police diary as well as status report. The learned Judge also found that 556 witnesses including the complainant have been examined and possession of number of documents has been taken. The learned Judge has also observed that he was satisfied with the investigation and that the prayer for grant of three months further time for completion of investigation is justified. In this context, the learned Judge has observed that time was granted for completing reinvestigation. It is to be seen that the word 'complete reinvestigation' has been used in reference to the context of the government directions and it has been clarified that the investigation would not be confined to the points on which the directions which have been issued by the State Government but there shall be a complete 'reinvestigation' in the matter. Any way, it is very clear that the ACB investigation and the charge-sheet submitted consequent upon the said investigation have not been quashed and set aside by this court by this court's order dated 29.4.1997 or by any other order which has been passed by any court in the aforesaid matter before us after the said order. I am, therefore, of the clear opinion that the earlier investigation has not been quashed and set aside and the charge-sheet has also not been quashed and set aside. Therefore, it was incumbent on the part of the learned Special Judge to consider the papers produced before him by the ACB with regard to the investigation undertaken by it.

12. An attempt was made to argue that there was some

dispute about seniority between the concerned officer of the ACB at the relevant point of time the respondent Kannu Pillai. That, with a view to bypass respondent Kanu Pillai, some investigations were wrongly and falsely undertaken by the ACB with a view to see that respondent Kannu Pillai may not come in the way of the aforesaid officer of the ACB. However, the fact remains that the ACB investigation has never been quashed and set aside by this court and I am of the opinion that the aforesaid observation made by this court in its order dated 29.4.1997 to the effect that there shall be complete reinvestigation, does not and did not mean that the earlier investigation should be treated as quashed and set aside. It is important to note that if this court intended to quash and set aside the earlier investigation, this court would have certainly passed an order for quashing the charge-sheet also. That has not been done. Even in order dated 29.4.1997, there is no observation to that effect showing that the charge-sheet was quashed and set aside. In that view of the matter, I am of a clear decision that the charge-sheet and the investigation of the ACB has never been set aside by this court and, therefore, it was incumbent on the part of the learned Judge to consider those papers made available to him by the ACB as Investigating Agency.

13. Mr P G Desai, Ld. Advocate, arguing the matter on behalf of the CBI has argued that the matter has been carried upto the Apex Court and there the matter has been totally dismissed. I am of the opinion that the Hon'ble Supreme Court has dismissed the petition before it and there is no dispute that while dismissing the said petition before the Supreme Court, reasoned orders have not been passed. Therefore, it is not possible for this Court to hold that on the basis of the said order passed by the Supreme Court, the contentions raised by the present petitioner in Revision have been negatived by the Supreme Court.

14. It would be relevant to consider certain orders which have been passed by this Court in the earlier Misc.Criminal Application and Special Criminal Applications for extension of time for completing the investigation by the CBI. This can be gathered from order dated 29.7.1997 passed in Misc.Criminal Application No.4012/97 in Special Criminal Application No.204/97. This Court had directed that two months' time to complete the investigation is granted. The learned Advocate for the CBI has also shown me an order passed in Criminal Misc. Application No. 5458/97 on 1.10.1997. The orders passed by the Supreme Court in Special Leave to Appeal

(Criminal) No.1976/97 were also shown to me. The order appears to have been passed on 28.7.1997. The Hon'ble Supreme Court has passed an order in the aforesaid matter to the effect that the SLP is dismissed. It seems that when the SLP was dismissed, and was no merit. However, Mr P G Desai argued for the CBI that the petitioner in the present Revision Petition had prayed that further investigation made by the CBI may be declared null and void and the said petition was dismissed by the Supreme Court. In that event, if we take it that the said prayer has been turned down, it would not mean that the investigation by the CBI cannot be treated to be null and void. But at the same time, the investigation made by the ACB has never been quashed and set aside and, therefore, the said investigation cannot be brushed aside totally.

15. In the case of Ramu v. Jagannath, reported in AIR 1994 SC 26, it has been observed that revisional jurisdiction cannot be lightly exercised. There cannot be any dispute about the said principle. Here the point is different. It has been alleged by the petitioner and not controverted by the respondents that the ACB has provided certain materials to the learned Judge in the form of charge-sheet and the said charge-sheet has not at all been considered. When a particular material has not been considered by the trial Judge, even in that case, when the judgment and order of the trial court have to be treated to be illegal and perverse and the judgment and order of the subordinate court are found to be illegal and perverse, it would be necessary for this court to interfere by exercising the powers conferred on it by sections 397 and 401 of the Code.

16. Another decision can be gathered in the case of Rupan Deol Bajaj v. KPS Gill, reported in 1996 CRI.L.J.381. There it has been observed that quashing of an FIR and complaint by the Court would be illegal in absence of a finding that the allegations made in FIR were absured or inherently improbable.

17. Another decision is from Union Public Service Commission v. Papaiah, reported in 1997 Cri.L.J.4636, wherein it has been observed that a Magistrate accepting report and passing order of dropping proceedings without giving notice to the informant is illegal. It was held that such an order could not be maintained. Similar view was adopted in Bhagwant Singh v. Commissioner of Police, reported in 1985 Cri.L.J.1521. In the case of Bhanuprasad v. State of Gujarat, reported in 1968 GLR

853, it has been clearly observed that even if the first investigation was not in accordance with law, yet, it is in no sense non-est. Therefore, if the investigation is not set aside, the statements recorded by the Investigating Agency would remain as statements governed by the aforesaid provisions of the Code. Therefore, they cannot be overlooked by the trial court at the time of framing of charge by observing that at the time of recording evidence, when the question of contradicting the witness with their statements would arise, the said statements may be required to be considered. In the case of Radhey Shyam v. Kunju Behari, reported in AIR 1990 SC 121, it has been observed that at the time of framing of charge, meticulous consideration of evidence and materials by court was not required. In the case of State of Punjab v. Gurmit Singh, reported in AIR 1996 SC 1393, the question of appreciation of materials at the stage of framing of charge and consideration as to the FIR and the version of prosecutrix was dealt with.

18. In the present case we are not very much concerned with that aspect of the case. It is a fact that the ACB papers have not been considered by the trial Judge while deciding that there was no case against the respondent concerned. In the case of State of Bihar v. Ramesh Singh, reported in 1977 Cri.L.J. 1606, it was observed that at the initial stage if there is strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. Any way, I am of the opinion that the earlier investigation and the charge-sheet filed by the ACB have not been quashed and set aside by any order of this court. I am also of the opinion that the word 're-investigation' used in the aforesaid order does not lead us to believe that this court had quashed and set aside the earlier investigation and the charge-sheet followed by the said investigation filed before the trial court. The investigation as well as the charge-sheet are well alive and, therefore, it was necessary for the learned trial Judge to consider the same even as some of the materials placed before him. If the trial Judge after such considerations, still feels that there is no ground for proceeding against the respondents, it would be open to him to pass appropriate order according to law but at the same time, the learned trial Judge could not have ignored the papers made available to him by the ACB.

19. As said above, learned advocate for the CBI, Mr P G Desai has argued that the learned Trial Judge has made some reference to the investigation made by the ACB. Therefore, according to him, it is clear that the learned trial Judge was aware about the existence of the investigation and the charge-sheet filed by the ACB. Now mere awareness of the trial Judge about the existence of the above material is not sufficient. In fact, the learned trial Judge was required to consider those materials along with the materials subsequently provided to him by the CBI. In fact, the learned Judge was required to consider the ACB papers, charge-sheet and the report submitted by the CBI. It was only thereafter that the learned Judge could come to a finding as to whether or not there are grounds to proceed against the respondents or any of them and whether there was prima facie case against the respondent or any of them. I am afraid, this has not been done by the learned trial Judge. In that view of the matter, though the learned APP Mr S P Dave appearing for the State and for the ACB also, states that the judgment and order of the trial court are legal and proper, it would not be possible for me to accept such arguments advanced by the learned APP for the State including the ACB. When the learned trial Judge has ignored certain materials made available to him, then in that case, the judgment and order of the trial court must be treated to be illegal and perverse and when the judgment and orders are found to be illegal and perverse and when it has been brought to the notice of this court that certain materials were overlooked or ignored by the learned trial Judge while deciding that there was no case to proceed against the respective respondents and there was no material to frame charge against the respondents, then in that case, it has to be held that the judgment and order of the trial court have been recorded by overlooking and by-passing the ACB materials placed before the learned trial Judge through investigation undertaken by the ACB and followed by charge-sheet.

20. As said above, learned Sr.Advocate for the petitioner has taken me through certain orders of this court and there the reference is made to further investigation in CR.No.20/95. I am of the opinion that all the orders of this court are required to be read together and they could not be read separately in isolating on a harmonious construction of the orders passed by this court, I am of the opinion that this court never quashed and set aside the investigation made by the ACB. This Court nowhere set aside the charge-sheet filed by the ACB. In fact, the court intended to go for

further investigation as can be gathered from the order dated 20.2.1998 and further orders under which directions have been issued to the CBI for further investigation. Therefore, the orders passed by this court related to further investigation and no fresh investigation.

21. In the aforesaid view of the matter, it is very clear that the learned trial Judge has not considered the materials made available to him by the ACB, which was followed by a charge-sheet. The charge-sheet is still pending in the trial court and it is alive. When the charge-sheet is alive it was required to be considered by the trial court. When the charge-sheet was required to be considered by the trial court, the investigation papers which preceded the charge-sheet could not be overlooked. In other words, the learned trial Judge has committed serious error in law in not taking into consideration the charge-sheet and the investigation papers of the ACB. Therefore, to that extent, the judgment and order of the trial court are illegal, erroneous and perverse. When the judgment and order of the trial court are illegal and erroneous, it is necessary for this court to interfere at this level in these revision applications.

22. It may be made clear that Mr R K Shah, learned Sr.Advocate for the petitioner had made it clear that the petitioner had filed FIR against some of the respondents only and, therefore, the petitioner would not be interested in prosecuting the matter against the other respondents. It would be open to the petitioner to make appropriate statements before the trial court when the matter may be argued before the trial court on the point as to whether there are grounds to proceed against the respondents or any of them or whether any prima facie case to frame charge against the respondents or any of them exists and the trial court will naturally consider the said aspect and decide the matter according to law.

23. The net result is that the judgment and orders of the trial court are illegal, erroneous and perverse, inasmuch as the trial court has not considered the ACB materials and charge-sheet before it. Therefore, these revisions are required to be allowed and the judgments and orders of the trial court are required to be quashed and set aside. In the result, these revision applications are allowed, the judgments and orders recorded by the learned trial Judge which have been

impugned in these revision applications are quashed and set aside. The matters are remanded to the trial court for fresh consideration in the light of the observations made hereinabove.

Rule is made absolute to the aforesaid extent.

Date:22.6.2001
[D P Buch, J.]
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